In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No. 588

F. EDWARDS,
Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Appellee and Respondent.

APPELLEE AND RESPONDENT'S BRIEF.

CHARLES A. WUTMORE, JR.,
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THE PEOPLE OF THE STATE OF CALIFORNIA,
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APPELLEE AND RESPONDENT'S BRIEF.

I.

PRELIMINARY STATEMENT.

Respondent accepts as correct the statement of the case made in appellant's brief.

The question presented is whether or not the California statute making it a misdemeanor for any person who brings or assists in bringing into this State any indigent person who is not a resident of the State, knowing him to be an indigent person, is valid. We also agree with appellant's re-statement of the ques-

tion involved as practically amounting to whether or not a State can actually exclude paupers from coming into the State. It certainly must be admitted that if a State cannot constitutionally exclude paupers from its boundaries it cannot constitutionally prohibit persons from bringing paupers into the State, and, accordingly our argument will be directed largely to this question.

Appellant has cited no direct holding either by this Court or by any other federal court on the question involved, and we believe that none exists. However, we submit that this Court on numerous occasions has repeatedly and over a long period of years stated by way of strong dictum that a State may close its borders to the interstate movement of paupers. We submit that this right of States to protect themselves against the influx of paupers is one of the inherent rights of a State not delegated by the Constitution of the United States or any amendment thereof.[1]

II.

SECTION 2615 OF THE WELFARE AND INSTITUTIONS CODE OF CALIFORNIA IS CONSTITUTIONAL BECAUSE IT CONSTITUTES A VALID EXERCISE OF THE POLICE POWER OF THE STATE.

We submit that Section 2615 of the Welfare and Institutions Code of California which makes it a misdemeanor for any person who brings or assists in bringing into the State an indigent person who is not a resident of the State, knowing him to be an indigent

1. *Home Building & Loan Ass'n v. Blaisdell*, 54 S. Ct. 231, 290 U. S. 398.

person, is a valid exercise of the police power of the State.

It would appear from its very nature the police power reserved to the States under the Constitution cannot be given any limited or specific definition but consists of the power to regulate the relative rights and duties of all within the State's jurisdiction so as to guard the public morals, the public safety, the public health, and the common good or what is more usually referred to as the general welfare of the people therein.

The Government of the United States being one of enumerated powers, those not granted by the Constitution to the Federal Government are necessarily reserved to the States.[2] The police power, an inherent attribute of State sovereignty,[3] was never surrendered to the Federal Government. The Supreme Court of the United States has always recognized this fundamental right as existing with the States.[4]

We submit that the Supreme Court early recognized in the case of *The Mayor etc. of New York v. Miln* (1837), 11 Pet. 102, 9 L. Ed. 648, the right of a State to exclude paupers from its boundaries under its police power. Section 1 of the State statute in the *Miln* case provided that the master of any ship arriving in the port of New York from any country out of the United States, *or from any other of the United States* than the State of New York, should within

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2. Supra, note 1.
3. *State of Ohio v. Helvering, Ohio*, 292 U. S. 360, 78 L. Ed. 1307.
4. *Jacobson v. Mass.*, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643; *Slaughter House Cases* (1873), 16 Wall. 36, 21 L. Ed. 395; *House v. Mayes* (1910), 219 U. S. 270, 55 L. Ed. 213, 31 S. Ct. 234; *Pierce v. New Hampshire* (1847), 5 How. 554, 12 L. Ed. 279.

twenty-four hours after the arrival of such ship, report in writing to the mayor of the city the name, place of birth, age and occupation of every person brought as a passenger on the ship with a penalty of $75.00 for each person not so reported. The defendant, a ship master who was sued under this statute, contended that the law was a regulation of commerce and therefore void. The Supreme Court sustained the constitutionality of the statute on the grounds that the object of the statute was to prevent the State of New York from being burdened with paupers, and that the purpose of the required report was to enable the city to take necessary steps preventing persons coming into the State from becoming chargeable as paupers. The Court held the statute valid as a proper exercise of the police power to control and exclude paupers. Justice Barbour in delivering the opinion of the Court stated:

> "Now, in relation to the section in the act before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves. There can be no mode in which the power to regulate the internal police could be more appropriately exercised."

Justice Barbour further stated:

> "We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possible convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship,

the crew of which may be laboring under an infectious disease."

It is unfortunate that Section 2 of the statute which provided that the master of the vessel should be bound in sureties in a sum not to exceed $300.00 for every passenger in order that the city be saved harmless from the possible maintenance of such persons was not actually passed upon. It was not counted upon in the original declaration which was demurred to and certified to the Circuit Court and finally before the Supreme Court.[5] Section 2 of the New York statute was clearly anti-pauper legislation, and although Justice Barbour's opinion seems to consider the fact as a whole, nevertheless, Section 1 which merely required the report of the master as to *all* his passengers was the only section actually before the Court, and the consideration of which was necessary to the decision. Hence, what, but for a limited certification, would have been a direct holding on the right of a State to exclude paupers[6] under its police power is relegated to the status of very strong dictum. We urge that in view of the unequivocal opinion of the Court in the *Miln* case there can be little doubt that had the last mentioned issue been squarely before the Court its validity would likewise have been favorably passed upon. Due to the confusion over the actual issue involved in the *Miln* case, it was cited by Justice Grier in his opinion in the *Passenger Cases*, 7 How. 283, 12

5. See concurring opinion of Justice Thompson in the *Miln* case.

6. It is to be noted that the opinion in the *Miln* case purports to uphold the exclusion of: (a) Paupers from without the U. S. (b) Paupers from other states of the U. S. Various Acts of Congress subsequently prohibited the immigration of *alien* paupers.

L. Ed. 775, as being an express holding upon the question.

Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a State in the exercise of its police power to exclude paupers from its limits.[7]

In conformity with earlier dicta to the effect that the exclusion of paupers from a State was a valid exercise of State police power, this Court finally had occasion to make a direct holding that the exclusion of immigrant paupers from the United States was a valid exercise of the federal police power. In the case of *Kaoru Yamataya v. Fisher* (better known as the "Japanese Immigrant Case"), 189 U. S. 86, the United States immigration officers refused to allow plaintiff, a Japanese citizen, to enter the United States on the ground that she was a pauper and therefore came within the provisions of the Immigration Act of 1901 which provided for the exclusion of, among others, paupers or persons likely to become a public charge. Plaintiff contended that this statute was invalid as it conflicted with a treaty with Japan which treaty provided that all Japanese citizens had full liberty to enter, travel or reside within the United States. However, the treaty expressly excepted from its operation any regulations relating to "police and public security". Consequently, the issue squarely before the Court

7 *Hannibal & St. Joseph R. R. Co. v. Husen* (1878), 95 U. S. 465, 24 L. Ed. 527;
In re Ah Fong (1874), 3 Saw. 144, 1 Fed. Cases 213;
Henderson v. Wickham (1875), 92 U. S. 259, 23 L. Ed. 543;
Chy Lung v. Freeman (1876), 92 U. S. 275, 23 L. Ed. 550;
Passenger Cases, supra;
Plumly v. Mass. (1894), 155 U. S. 461;
Missouri K. and T. Ry. v. Haber (1898), 169 U. S. 613.

was whether or not the statute was a valid police regulation. The Supreme Court held that the statute was a valid exercise of the police power, and Mr. Justice Harlan, in delivering the opinion of the Court, stated:

> "A statute excluding paupers or persons likely to become a public charge is manifestly one of police and public security."

In the "Japanese Immigrant Case" the Supreme Court necessarily held that the exclusion of paupers was a police measure properly to be exercised by the Federal Government. Surely, if such exclusion of paupers in immigration is a valid federal police measure, it would also follow that the same exclusion by the States would be but the States' exercise of the same kind of power and valid under the reservation of such power by the several States under the Constitution.

Section 2615 of the California Welfare and Institutions Code is a re-enactment of the identical statute which was originally passed by the California legislature in 1901 (Cal. Stats. 1901, p. 636, Sec. 3) re-enacted in 1933 (Cal. Stats. 1933, p. 2010, Sec. 13) and finally placed in the Welfare and Institutions Code by the legislature in 1937 where it has since remained. Thus, California has for forty years realized the need for police legislation against the immigration of paupers, although events of the last ten years have made this problem increasingly acute because of the attraction to California of paupers from other States because of higher relief benefits, old age pensions, etc. However, the Supreme Court of California never had an oppor-

tunity to pass upon this statute, although it was indicated at an earlier date that such a statute would be a valid exercise of the State's police power.[8]

Many other States have statutes similar to the California statute[9] but their validity has never been passed upon by the Supreme Court.

Inasmuch as the police power of a State consists in its power to regulate the health, safety, morals and general welfare of all within its jurisdiction, we submit that the California statute comes within all of these general classifications.[10]

Although in 1901 when the statute under consideration was originally enacted there was no acute pauper emigration to California, the last decade has developed a problem from this source staggering in its proportions.

A social problem in the south and southwest for over half a century, the "poor white" tenants and share croppers, following reduction of cotton planting, droughts and adverse conditions for small scale farming, swarmed into California. These unfortunate people were usually destitute when they arrived. Their ordinary routine has been, upon coming to California, first to go on Federal Relief for one year and then on

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8. *State v. S. S. Constitution* (1872), 42 Cal. 578.

9. *State v. Cornish* (1890), 66 N. H. 329, 21 A. 170;
Pitkin County (1893), 3 Colo. App. 328, 33 Pac. 143;
Super. of Poor of Newcaygo v. Nelson (1899), 42 N. W. 797;
Coe v. Smith (1841), 24 Wend. 341.

10. *St. Louis & S. F. R. R. Co. v. Matthews*, 165 U. S. 1, 41 L. Ed. 611, 17 S. Ct. 243;
Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. Ed. 635, 37 S. Ct. 260;
Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413.

to State and County Relief rolls indefinitely. After they earn a little money in the harvests they send back home transportation for their relatives, generally the aged and infirm, and these immediately become and continue public charges. They avoid our cities and even our towns by crowding together in the open country and in camps under living conditions shocking both as to sanitation and social environment. Underfed for many generations they bring with them the various nutritional diseases of the South. Their presence here upon public relief, with their habitual unbalanced diet and consequently lowered body resistance, means a constant threat of epidemics. Venereal diseases and tuberculosis are common with them and on the increase. The increase of rape and incest are readily traceable to the crowded conditions in which these people are forced to live. Petty crime among them has featured the criminal calenders of every community into which they have moved. As proven by experience in agriculture strikes, they are readily led into riots by agitators although it must be said they stubbornly resist all subservient influences, being loyal Americans whose only wish is for a better chance in life. Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane. Therefore, how can it be said that California should not have the power in the protection of the safety, health, morals and welfare of its people, to bar proven paupers among these indigents from our State? Should the States that have so long tolerated and even fostered the social conditions that have re-

duced these people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into California to become our public charges upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State.

III.

REPLY TO APPELLANT'S BRIEF.

Appellant first contends that the California statute violates the Commerce clause of the Constitution of the United States[11] on the ground that the passage of persons from State to State is interstate commerce and consequently a State statute designed to obstruct the free passage of persons into a State is an attempted regulation of commerce and as such is null and void. We agree with appellant's declaration that the movement of persons from one State to another constitutes interstate commerce under the early definition laid down by Mr. Chief Justice Marshall in the famous case of *Gibbons v. Ogden*, 9 Wheaton 1, wherein it was stated that commerce is "intercourse".

However, we heartily disagree with appellant's further contention that because a State statute happens to affect interstate commerce that it is necessarily void. We submit that the commerce clause is subject to a

11. *U. S. Const.*, Article I, Sec. 8, Cl. 3.

valid exercise of a State's police power and if a statute is a proper police measure it is valid even though interstate commerce may be incidentally affected.[12] This right was early recognized by the Court in *Hannibal and St. Joseph R. R. Co. v. Husen*, 95 U. S. 465, wherein the Court stated:

> "We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may properly be denominated police power."

The Court then went on to add:

> "It may also be admitted that the police powers of a State justify the adoption of precautionary measures against social evils. Under it, a State may legislate to prevent the spread of crime or pauperism or disturbances of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases:"

This Court has also taken the position that such State regulation of paupers is not violative of the commerce clause by simply declaring that paupers, indigents, and vagabonds are not legitimate subjects of interstate commerce. In the *License Cases*, 5 How. 504, 12 L. Ed. 256, the Court stated:

> "It is to be remembered that disease, pestilence and pauperism are not subjects of commerce.

12. *Bayside Fish Flour Co. v. Gentry*, 297 U. S. 422, 59 S. Ct. 513;
Great Northern R. Co. v. Washington, 300 U. S. 154, 81 L. Ed. 573, 57 S. Ct. 397;
Denver & R. G. R. Co. v. Denver, 250 U. S. 241, 63 L. Ed. 958, 39 S. Ct. 450.

> * * * They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them."

Again in the *Passenger Cases,* 7 How. 283, 12 L. Ed. 702, the Court said:

> "But I have said the States have a right to turn off paupers, vagabonds and fugitives from Justice, and * * * When Congress shall legislate—if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of the government—to make paupers, vagabonds, suspected persons and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared should it ever become a matter for judicial decision, that such persons are not within the regulating power which the United States has over commerce. Paupers, vagabonds, and fugitives never have been subjects of rightful national intercourse, or of commercial regulation, except in the transportation of them to distant colonies to get rid of them, or for punishment as convicts."

Thus, the Supreme Court has consistently declared that the exclusion of paupers by a State is not violative of the commerce clause.

Appellant also contends that the California statute violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States. Our answer to this contention is that the 14th Amendment is subject to a valid exercise of the police power of the States, as the passage of this

amendment did not effect a surrender of this power to the Federal Government. Justice Field in his opinion in the case of *Barbier v. Connolly,* 113 U. S. 27, 5 S. Ct. 357, very clearly brought out this proposition when he stated:

> "But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power', to prescribe regulations to promote the health, peace, morals, education and good order of the State, develop its resources and add to its wealth and prosperity."

And in *Louisville & N. R. Co. v. Melton,* 218 U. S. 36, 30 Sup. Ct. 676, the Court said:

> "That the 14th Amendment was not intended to and does not strip the states of the power to exert their lawful police authority is settled, and requires no reference to authorities."

It is true that the 14th Amendment protects the life, liberty and property of persons within the boundaries of the United States, but as the Supreme Court has explicitly and repeatedly reiterated this protection is subject to reasonable police regulation by the States.[13] It may be said that the great majority of our laws, whether State or national, in some way restrict our liberty, but as they are necessary limitations and are for the common good, it cannot be contended that they are invalid.

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13. *Nebbia v. New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505;
Lacoste v. Department of Conservation, 263 U. S. 545, 68 L. Ed. 437, 44 S. Ct. 186;
Keller v. United States, 213 U. S. 138, 29 S. Ct. 470, 53 L. Ed. 737.

IV.

CONCLUSION.

The State of California does not wish to shirk or evade the responsibilities of taking care of its own indigents, but does not desire and is not in a position to shoulder the burden of caring for the indigents from a great many of her sister States, especially from the regions of the Great Plains and the South.

California has already been doing far more than her share of providing for her own indigents as well as for the general influx of indigents from other States. The amount of aid extended through State and county public assistance agencies in California has risen from $82,820,943.46 for the period of June, 1936, to July, 1937, to $138,160,668.26 for the period of January, 1940, to February, 1941.[14]

During the period from July 1, 1935, through 1939 inclusive, more than 350,000 migrants whose breadwinners were in need of manual employment entered the State of California by automobiles at border checking stations maintained by the Department of Agriculture.[15] That the total number of migrants who have entered California during this period was far in excess of this figure is evident when it is realized that no count has been made of persons in need of manual employment entering the State by bus, as coach passengers on railroad trains, or as riders on freight trains.[16]

14. Summary of Public Assistance, February, 1941, State of California Department of Public Welfare.

15. Migrants—A National Problem—and Its Impact on California, California State Chamber of Commerce, May, 1940.

16. Ibid.

In the decade 1930-1940 the net migration into this State, that is, arrivals less departures, has been more than 1,200,000 persons, according to the best available estimates.

However, there is no evidence of any commensurate increase in the available gainful occupations or employment in California during the past decade. In agriculture, there has been no substantial increase in the number of persons gainfully occupied as farmers or laborers, in 1940 as compared to 1930.

The 25 per cent increase in California's population over the decade has not been compensated by a relatively greater increase in employment, and every factory employment showed less than a 15 per cent increase in employment, over 1929 during the peak year of 1937.[17] Any near future increase in employment due to defense industries in this State will necessarily be temporary.

In such areas as the Sacramento and San Joaquin Valleys, where the resident population of entire counties has been increased by 40 or 50 per cent within a five-year period, with more than half of this increase concentrated within a two-year period, there have developed some acute problems of housing, health and sanitation, education of children, hospitalization, and relief.[18]

The outlays of many counties for education, sanitation, and hospitalization increased during this five-year period from 100 per cent to 300 per cent.[19]

17. Ibid, 10.
18. Special Tabulation by California Taxpayers' Association.
19. Ibid.

One of the consequences of the large influx of indigents into California from the other States has been to increased the combined county and local district tax levies approximately 100 per cent in the five southern San Joaquin Valley counties, 50 per cent in the six adjacent valley agricultural counties to the north, 55 per cent in Los Angeles County, and 38 per cent over the remainder of the State.[20]

Further evidence of the dependency of the recent indigents upon relief in the various counties in the State is furnished by an analysis of the heads of families on the State unemployment relief rolls, as of February, 1939.[21]

In Madera County, for example, 55 per cent of the heads of families on the State relief rolls during February, 1939, had been in the State less than five years. In Tulare County the comparative percentage was 52 per cent. In Merced and Kern counties it was approximately 46 per cent. In Stanislaus County it was 45 per cent, and in Yuba County 38 per cent.[22]

Although adequate data are not available on the average earnings of unskilled workers either prior or following the influx, it would seem obvious that the impact of the migration has been to reduce average earning per worker.

The State of California has higher relief benefits and old age pensions than any other State in the

20. Ibid.

21. Data Furnished by the Division of Planning and Research of the California State Relief Administration.

22. Ibid.

union,[23] and consequently, indigents are encouraged to depart from the State of their origin and trek to this State in the hope of bettering themselves. On the other hand, many of the sister States keep their relief and old age benefits extremely low in order to encourage their indigents to leave the State and go elsewhere, usually to California.

For example, payments to general relief cases during the month of January, 1940, amounted to $31.35 per case in California, as compared to $4.86 in Arkansas, $4.96 in Oklahoma, and $7.08 in Texas.[24]

Average monthly payments to recipients of old-age aid in California were $38.00 per case, compared to $6.00 in Arkansas, $8.91 in Texas, and $17.58 in Oklahoma.[25]

Aid to dependent children averaged $43.94 per family in California, compared to $8.12 in Arkansas and $12.24 in Oklahoma. Texas has no such program.[26]

It should also be noted that the California figures included only cash payments provided to the various groups mentioned and do not include any estimate of the value of surplus commodities provided in addition to cash.

Thus, it appears that California by her humanitarian policy of better providing for indigents than have the other States has in turn been made to suffer by such

23. See Table 1, Appendix.
24. Ibid.
25. Ibid.
26. Ibid.

course through the less generous policies of many of her sister States.

In the event the California statute is not upheld, persons, agents, corporations, etc., will be allowed to continue bringing in and assisting in bringing into this State more indigents from the other States, with the result that the relief burden will become prohibitive, wages for unskilled labor will continue downward due to the oversupply of such labor, and the State itself will eventually become bankrupt.

Finally, we submit that the Supreme Court has repeatedly laid down the fundamental rule that there exists a presumption in favor of the constitutionality of a legislative enactment,[27] and has laid down the additional principle that the presumption of constitutionality of a statute dealing with a subject clearly within the scope of the police power prevails in the absence of some factual foundation of record for declaring it to be unreasonable.[28]

We further submit that appellant has failed to meet the burden of showing that the California statute is invalid.

27. *Butterfield v. Stranahan*, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349; *Powell v. Pennsylvania*, 127 U. S. 678, 32 L. Ed. 253, 8 S. Ct. 992; *Fletcher v. Peck*, 6 Cranch 87, 3 L. Ed. 162.

28. *O'Gorman & Young v. Hartford F. Ins. Co.*, 282 U. S. 251, 75 L. Ed. 324, 51 S. Ct. 130.

The judgment appealed from should be affirmed.

Dated, Marysville, California,
April 21, 1941.

Respectfully submitted,

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(Appendix Follows.)

Appendix

Comparative Public Assistance Data—January, 1940.

State	General Relief[1]			W. P. A.*		
	No. of Cases	Obligations Incurred	Average Amount Per Case	Persons Employed	Earnings	Average Per Person
California	160,534	$5,033,304	$31.35	86,096	$5,379,000	$62.48
Oregon	12,039	193,569	16.08	14,498	872,000	60.15
Washington	24,349	349,936	14.37	25,608	1,501,000	58.61
Arizona	2,886	41,258	14.30	5,821	337,000	57.89
Arkansas	3,768	18,328	4.86	42,132	1,789,000	42.46
Kansas	29,112	424,001	14.56	25,325	1,259,000	49.71
Missouri	35,955	461,076	12.82	76,757	4,061,000	52.91
Oklahoma**	13,100	65,000	4.96	45,906	1,878,000	40.91
Texas**	15,400	109,000	7.08	88,680	3,638,000	41.02

State	Old Age Assistance			Aid to Dependent Children		
	No. of Recipients	Obligations Incurred	Average Per Person	No. of Families	Obligations Incurred	Average Per Family
California	134,740	$5,120,596	$38.00	14,513	$637,644	$43.94
Oregon	20,521	437,740	21.33	1,918	76,560	39.92
Washington	39,098	861,880	22.04	4,811	143,654	29.86
Arizona	7,848	211,677	26.97	2,482	79,912	32.20
Arkansas	18,464	110,806	6.00	4,051	32,904	8.12
Kansas	26,236	505,407	19.26	6,139	175,212	28.55
Missouri	79,280	1,307,863	16.50	9,902	231,635	23.39
Oklahoma	70,546	1,240,373	17.58	17,482	213,896	12.24
Texas	119,900	1,068,107	8.91	0	0	0

*W.P.A. and other federal agencies, December, 1939.

**Estimated.

1. Includes cases receiving hospitalization and for burial only, not previously reported.

Source: January issue of Public Assistance—Soc. Security Board.